In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1063

HERMAN P. UNGER, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a bench trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of possessing unregistered firearms, machine guns, rifles, pistols, and hand grenades in violation of 26 U.S.C. 5861(a) and fined $500. The court of appeals affirmed (Pet. App. A).

Petitioner contends that the affidavit for the search warrant, pursuant to which the police discovered and seized the unregistered firearms, was insufficient. The affidavit is set forth at Pet. App. 13-14 n. 2. Petitioner's contention was fully answered in the lengthy opinion of the court below, upon which we rely (Pet. App. 11-19).[1]

[1]As to petitioner's suggestion that the decision below on the question of the timeliness of the information conflicts with *Rosencranz* v. *United States*, 356 F. 2d 310 (C.A. 1), and *United States* v. *Boyd*, 422 F. 2d 791 (C.A. 6), we note that the information there—that an informant had detected the odor of fermenting mash on the defendant's property—did not carry the strong implication of immediacy and urgency inherent in the information concerning the dangerous weapons involved here. See Pet. App. 18-19.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1973.